FILED BY CLERK
MAR -9 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | |
|---|---|
| THE STATE OF ARIZONA,<br><br>Appellee,<br><br>v.<br><br>THADDEUS IKOSY'S CRAWFORD,<br><br>Appellant. | 2 CA-CR 2009-0188<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 111, Rules of<br>the Supreme Court |

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR-200700799

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

---

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Kathryn A. Damstra
Tucson
Attorneys for Appellee

Trebilcock & Carol, PLLC
By Robert J. Trebilcock
Phoenix
Attorneys for Appellant

---

H O W A R D, Chief Judge.

**¶1** Following a jury trial, appellant Thaddeus Crawford was convicted of first-degree murder, attempted murder, and three counts of aggravated assault. The trial court sentenced him to a series of mostly consecutive terms amounting to life in prison plus 25.5 years. On appeal, Crawford argues the trial court improperly instructed the jury on accomplice liability and erroneously admitted irrelevant testimony. For the following reasons, we affirm.

## Factual and Procedural Background

**¶2** "We view the facts in the light most favorable to sustaining the convictions." *State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). In November 2007, four people were in the parking lot of an apartment complex when Thaddeus Crawford and at least two others attacked them. Several shots were fired, and some of the parties engaged in a physical fight. These events resulted in the death of one victim and the injury of two others. When police arrived at the scene, they found Crawford on the ground, also injured. As a result of these events, Crawford was charged with first- and second-degree murder, attempted murder, and three counts of aggravated assault. He was convicted of all charges, but the court later dismissed the charge of second-degree murder because it is a lesser-included offense of first-degree murder. This appeal followed.

## Jury Instructions

**¶3** Crawford argues his constitutional right to a unanimous verdict was violated when the trial court instructed the jury on accomplice liability as to the murder charge because he had lacked "the requisite mental state for first or second degree

murder."[1] Because he did not raise this issue below, we limit the scope of our review to fundamental error. *See State v. Cordova*, 198 Ariz. 242, ¶¶ 10-12, 8 P.3d 1156, 1158-59 (App. 1999) (we review jury instructions only for fundamental error when defendant failed to timely object). Fundamental error requires the defendant to establish: (1) that an error occurred; (2) that the error was fundamental; and (3) that the error resulted in prejudice. *State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005).

**¶4** Crawford has not explained clearly how the unanimity requirement is implicated in this situation. And a defendant is not denied a unanimous verdict by an instruction on accomplice liability in these circumstances. *See State v. Adrian*, 111 Ariz. 14, 17, 522 P.2d 1091, 1094 (1974). Thus, we conclude the court did not fundamentally err by instructing the jury on the theory of accomplice liability.

**¶5** Crawford also claims the trial court's instructions on premeditation and accomplice theory were erroneous. But he did not object to the jury instructions below, and the record does not contain any instructions proposed by Crawford. Therefore, he has forfeited the right to seek relief for all but fundamental, prejudicial error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607 (failure to object to alleged error in trial court results in waiver of review for all but fundamental error). The instructions the court gave were an accurate statement of the law and did not mislead the jury. *See State*

[1]Because the trial court granted Crawford's motion and dismissed the second-degree murder charge with prejudice, his argument that we should reverse his conviction for second-degree murder is moot.

*v. Ellison*, 213 Ariz. 116, ¶¶ 93-94, 140 P.3d 899, 921 (2006). Accordingly, no fundamental error occurred.[2]

**¶6** The real focus of Crawford's argument seems to be that there was insufficient evidence to establish the required mental state necessary to find he was an accomplice to murder. He cites *State v. Phillips*, 202 Ariz. 427, 46 P.3d 1048 (2002), to support his argument that he cannot be held criminally liable for a murder he never intended to or helped commit.

**¶7** Because Crawford does not cite any authority addressing standards of review or legal requirements for reviewing a claim of insufficiency of the evidence, this argument is waived. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (issue waived when argument insufficient to permit appellate review). Moreover, his unsupported argument that "it would not be unreasonable for a juror to believe" he had not planned to aid in the murder fails under the proper legal standard. *See State v. Fimbres*, 222 Ariz. 293, ¶ 4, 213 P.3d 1020, 1024 (App. 2009) (we will not reverse if substantial evidence supports conviction; substantial evidence is "'evidence that reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt'"), *quoting State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005) (internal quotations omitted). Finally, to the extent Crawford's argument suggests a conflicting inference could reasonably be drawn from the evidence,

[2]To the extent Crawford argues in his reply brief that trial counsel erred, we will not address a claim of ineffective assistance of counsel on appeal. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002).

such a conflict was for the jury to resolve. *See State v. Landrigan*, 176 Ariz. 1, 5, 859 P.2d 111, 115 (1993).

**Admitted Testimony**

**¶8** Crawford next argues the trial court erred in admitting irrelevant and prejudicial testimony by one of the state's witnesses. We review the court's rulings on the relevance and admissibility of evidence for an abuse of discretion. *State v. Rutledge*, 205 Ariz. 7, ¶ 15, 66 P.3d 50, 53 (2003). The state presented a witness who testified that, after the shooting, one of the other alleged assailants had asked her to give him and two others a ride. She picked them up several blocks from where the shooting had occurred and drove one of them to his home and the others to a nearby motel.

**¶9** Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401. In the context of Rule 404(b), Ariz. R. Evid., evidence may be admitted to "complete the story" if it is "'so connected with the crime of which the defendant is accused that proof of one incident[al]ly involves the other or explains the circumstances of the crime.'" *State v. Alatorre*, 191 Ariz. 208, ¶ 18, 953 P.2d 1261, 1266 (App. 1998), *quoting State v. Johnson*, 116 Ariz. 399, 400, 569 P.2d 829, 830 (1977).

**¶10** Testimony about what the other alleged assailants did after the crime does not make Crawford's guilt or innocence more or less probable, and it does not contradict any theory of Crawford's defense. In addition, the testimony neither concerned nor helped explain Crawford's actions. Crawford was injured and still on the scene by the

time the witness gave the other three men a ride, and, there was no evidence proving Crawford would have been with them even had he not been injured.

**¶11** The state, citing *State v. Bloomer*, 156 Ariz. 276, 751 P.2d 592 (App. 1987), argues that the trial court was correct in admitting this evidence. In *Bloomer*, this court concluded that evidence concerning other inmates' hiding contraband was admissible under Rule 404(b) because it "gave the jury a complete picture, was helpful in understanding appellant's conduct, and was admissible to explain the circumstances of appellant's crime." *Id.* at 280, 751 P.2d at 596. But, as stated above, the evidence here does not fulfill any of those functions. Crawford's role in these crimes was over by the time of the events described in the challenged testimony. Thus, the testimony was not relevant and, therefore, not admissible. *See* Ariz. R. Evid. 402 ("Evidence which is not relevant is not admissible.").

**¶12** Nonetheless, we "'will not reverse a conviction if an error is clearly harmless.'" *State v. Green*, 200 Ariz. 496, ¶ 21, 29 P.3d 271, 276 (2001), *quoting State v. Doerr*, 193 Ariz. 56, ¶ 33, 969 P.2d 1168, 1176 (1998). "Error is harmless if we can say beyond a reasonable doubt that it did not affect or contribute to the verdict." *Doerr*, 193 Ariz. 56, ¶ 33, 969 P.2d at 1176. There was ample evidence presented that connected Crawford to the crimes: he had been seen with a revolver earlier in the evening; his blood was on one of the weapons recovered near the scene; and he was found wounded nearby. His defense was that he had merely intervened in an altercation. And the admitted testimony neither impeded his ability to present this defense nor otherwise

bolstered the state's case. Thus, we can say beyond a reasonable doubt that the admission of this irrelevant testimony "did not affect or contribute to the verdict." *Id.*

**Conclusion**

**¶13** In light of the foregoing, we affirm Crawford's convictions and sentences.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge